

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TIMOTHY COOLEY,
Plaintiff,

v.

Civil Action No. 12-10296-PBS

FOX NEWS CENTER,
Defendant.

MEMORANDUM AND ORDER

March 8, 2012

SARIS, U.S.D.J.

I. INTRODUCTION

On February 13, 2012, plaintiff Timothy Cooley ("Cooley"), a resident of Burlington, Massachusetts, filed a Complaint against Fox 25/My Fox News ("Fox") alleging defamation. The matter arises out of an June 14, 2010 article published by Fox stating that Cooley had been charged with indecent assault and battery of a minor. Cooley contends the statements in the article were untrue, and have caused damage to his reputation, and other damages.

On February 21, 2012, this Court issued a Memorandum and Order (Docket No. 3) granting Cooley's Motion for Leave to Proceed *in forma pauperis*, and directing him to show cause why this action should not be dismissed for lack of subject matter jurisdiction based on diversity because Cooley had alleged that the defendant also was a resident of Boston, Massachusetts.

On March 1, 2012, Cooley filed a Response (Docket No. 4).

II. DISCUSSION

In his Response, Cooley alleges this Court has diversity

jurisdiction because he erroneously listed the defendant as Fox 25/My Fox News. He now claims the proper defendant is "Fox News Center," whose citizenship (for diversity purposes) is New York.

In light of the apparent diversity of the parties, this Court will permit this action to proceed at this time, and will direct that Fox News Center will be substituted for Fox 25/My Fox News. The Clerk will be directed to issue a summons as to Fox News Center, along with the standard forms for service of process.

Finally, because Cooley is proceeding *in forma pauperis*, the United States Marshal Service will be ordered to effect service of process as directed by Cooley, as set forth below.

III. CONCLUSION

Based on the foregoing, it is hereby Ordered that:

1. Fox News Center shall be SUBSTITUTED as the sole defendant in this action in lieu of Fox 25/My Fox News, and the Clerk shall correct the docket accordingly;
2. All claims against Fox 25/My Fox News are DISMISSED in light of the substitution of defendant Fox News Center.
3. The Clerk shall issue a summons as to Fox News Center, 1211 Avenue of the Americas (a/k/a the News Corp. Building), New York, NY 10036; and
4. The Clerk shall send the summons, a copy of the Complaint, and this Memorandum and Order to the plaintiff, who must thereafter serve the defendant in accordance with Federal Rule of Civil Procedure 4(m). The plaintiff may elect to have service made by the United States Marshal Service. If directed by the plaintiff to do so, the United States Marshal shall serve the summons, Complaint, and this Memorandum and Order upon the defendant, in the manner directed by the plaintiff, with all costs of service to be advanced by the United States Marshal Service.

Notwithstanding Fed. R. Civ. P. 4(m) and Local Rule 4.1, the plaintiff shall have 120 days from the date of this Order to complete service.

SO ORDERED.

/s/ Patti B. Saris
PATTI B. SARIS
UNITED STATES DISTRICT JUDGE